

ESTTA Tracking number: **ESTTA135468**

Filing date: **04/15/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Zodiac Pool Care, Inc.
Granted to Date of previous extension	04/15/2007
Address	2028 N.W. 25th Avenue Pompano Beach, FL 33069 UNITED STATES
Attorney information	William H. Brewster KILPATRICK STOCKTON LLP 1100 Peachtree Street, Suite 2800 Atlanta, GA 30309 UNITED STATES tmadmin@kilpatrickstockton.com, cjames@kilpatrickstockton.com

Applicant Information

Application No	78822637	Publication date	10/17/2006
Opposition Filing Date	04/15/2007	Opposition Period Ends	04/15/2007
Applicant	XiniX Holdings, Inc. 875 Prospect Street #301 La Jolla, CA 92037 UNITED STATES		

Goods/Services Affected by Opposition

Class 001. First Use: 2005/11/06 First Use In Commerce: 2005/12/15
All goods and services in the class are opposed, namely: water purification chemicals

Attachments	Scanned Notice of Opposition KLEAR WATER XiniX Holdings v. Zodiac Pool Care Inc. (TM_ CLEARWATER).PDF (4 pages)(183871 bytes)
Signature	/W. Brewster/
Name	William H. Brewster
Date	04/15/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ZODIAC POOL CARE, INC.)	
)	
Opposer,)	
)	Serial No. 78/822637
v.)	
)	TM: KLEAR WATER (Stylized)
XINIX HOLDINGS, INC.)	
)	Opposition No. _____
Applicant.)	

NOTICE OF OPPOSITION
AND
CONSENT OF OPPOSER TO AMENDMENT REQUEST OF APPLICANT

Opposer, Zodiac Pool Care, Inc., a Delaware corporation, with its principal place of business at 2620 Commerce Way, Vista, California 92081-8438 ("Opposer"), in the event that Applicant's April 12, 2007 amendment request is not approved by the Board, believes that it will be damaged by registration of Applicant, Xinix Holdings, Inc.'s ("Applicant") application to register the mark KLEAR WATER, filed under Application Serial No. 78/822637 and published in the Official Gazette of October 17, 2006 ("KLEAR WATER mark") and hereby opposes Serial No. 78/822637, pursuant to the provisions of 15 U.S.C. §1063 and 37 C.F.R §§2.101 and 2.104, to preserve its rights. For grounds of opposition, Opposer alleges that:

1.

Opposer is the owner of the United States trademark CLEARWATER (Stylized), used in connection with chlorinator systems for pools and spas and protected under federal trademark Registration No. 2587362 in connection with "chlorinator systems comprised of a control unit that regulates the electrical output to an electrode cell" (the "CLEARWATER mark").

2.

Opposer, itself and through its predecessor in interest, has used the CLEARWATER Mark in connection with the above-mentioned chlorinator systems since at least as early as 1995.

3.

Opposer's CLEARWATER mark is symbolic of the extensive good will and consumer recognition established and developed by Opposer and its predecessor through substantial investments of time, money, and effort in advertising and promoting Opposer's goods. As a result of the efforts of Opposer and its predecessor, the consuming public has become familiar with and identifies the CLEARWATER mark as being associated with, and understands and expects that pool and spa chlorination systems associated with the CLEARWATER mark are affiliated or associated with Opposer.

4.

Opposer's CLEARWATER mark has been validly and continuously used and has not been abandoned.

5.

On information and belief, Applicant, on February 24, 2006, filed an application to register the mark KLEAR WATER (Stylized) shown in Application Serial No. 78/822637 in connection with "water purification chemicals." Applicant's trademark application was first published for Opposition in the Official Gazette of October 17, 2006. Opposer filed Requests for Extensions of Time to Oppose this application on November 10 and December 15, 2006, extending the time to oppose until April 15, 2007.

6.

On information and belief, absent further restriction to the identification of goods, the water purification chemicals associated with the application to register the mark KLEAR WATER are closely related to the chlorinator systems associated with Opposer in its CLEARWATER mark and are or are likely provided to the same types of users and customers who are served by Opposer.

7.

Applicant's KLEAR WATER mark is highly similar to Opposer's CLEARWATER mark in sound, appearance, and overall commercial impression.

8.

Without further amendment to the identification of goods associated with Applicant's KLEAR WATER mark, Opposer will be damaged by registration of it in connection with "water purification chemicals" because Applicant's mark falsely suggests a connection with Opposer, and also is likely to cause confusion, mistake and deception, and to create the erroneous impression that Applicant's KLEAR WATER chemicals are those of Opposer or are otherwise affiliated with Opposer and its CLEARWATER mark.

9.

Opposer and Applicant have discussed the need for further amendment to Applicant's identification of goods so as to exempt from coverage those "water purification chemicals" that are used in connection with pools or spas. To the end, on information and belief, Applicant on March 19, 2007 filed an Amendment Request with the Trademark Examination Division requesting that the identification "water purification chemicals" be further limited to exclude those "for use in connection with pools or spas" and on April 12, 2007 further

communicated this request to the Board, pursuant to TBMP §212.03. Opposer, by and through its attorneys, hereby consents to the amendment in the subject application set forth in Applicant's April 12, 2007 request. Opposer is filing this Notice of Opposition to preserve its rights in the event that the requested amendment is not approved by the Board.

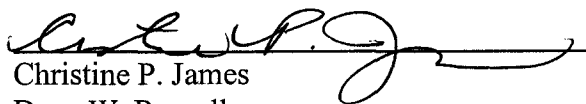
10.

Credit card payment of the official fee for \$300.00 is being submitted electronically with this Notice of Opposition and Consent of Opposer to Amendment Request of Applicant. The Commissioner is authorized to debit the deposit account of Kilpatrick Stockton LLP (Deposit Account No. 11-0860) for any deficiency in the required fee.

WHEREFORE, in the event that the amendment of Applicant's application to register the KLEAR WATER mark, under Serial No. 78/822637, filed by Applicant with the Board on April 12, 2007 is not approved by the Board, Opposer requests that the Board refuse registration to Serial No. 78/822637, and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

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Christine P. James
Dean W. Russell

Attorneys for Opposer
Zodiac Pool Care, Inc.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being filed electronically via ESTTA on this 15th day of April, 2007.

BY:


Christine P. James